### UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA,

Plaintiff

.

v. : CIVIL ACTION NO. 16-5367

:

KENNETH HUMPHREY,

Defendant :

### **ANSWER AND AFFIRMATIVE DEFENSES**

- 1. Admitted.
- 2. Admitted.
- 3. Denied. By way of further answer, upon information and belief the certification of indebtedness references or relates to an application for promissory note dated November 19, 1987. A copy of the certificate of indebtedness and application of promissory note was provided to Defendant in or about April, 2015 and are collectively attached as Exhibit "A". Defendant has contested that the loan application was completed by him and the funds referenced where not and could not have been provided to him or for his benefit as he was incarcerated in Rockview State Prison from 1981 to the summer of 1989. The application references a loan period from 1/19/1987 to 6/2/1988, which was the time period he was incarcerated; therefore, he could not have attended the school referenced as DVST located in Philadelphia, PA. In addition, the application references an address for borrower as 1019 North 55th Street and phone number of 215-476-9172. Defendant never resided at that address and never had that phone number.
- 4. Denied in part and admitted in part. It is admitted that a demand has been made. It is also admitted that Plaintiff has not paid the amounts demanded because said amounts are not due and owing from Kenneth Humphrey.

#### AFFIRMATIVE DEFENSE

#### **FACTS**

- 5. Defendant incorporates the facts above as though set forth at length.
- 6. Defendant, Kenneth Humphrey was incarcerated in Rockview Prison located in Bethlehem, Pennsylvania from 1981 through the summer of 1989. His prison identification numbers were BP0084 and Y3879.
- 7. Kenneth Humphrey claims that the debt alleged was not as a result of an advance to him or on his behalf, but is as a result of somebody fraudulently utilizing his name in completing the application attached as Exhibit "A".
- 8. The loan at issue was for a period of November 19, 1987, with an anticipated graduating date of June 2, 1988.
- 9. At no time did Kenneth Humphrey receive any of the funds referenced in the application.
- 10. It is believed and therefore averred that the debt is not Kenneth Humphrey's and as a result the fraud of someone else.
- 11. The claims are barred by the statute of limitations, laches and/or other legal or equitable grounds.

KANE & SILVERMAN, P.C.

BY:

Howard G. Silverman, Esquire

Attorney for Defendant Attorney I.D. No. 48319

2401 Pennsylvania Avenue, Suite 1A-5

Philadelphia, PA 19130

215-232-1000

## **EXHIBIT "A"**

# U. S. DEPARTMENT OF EDUCATION SAN FRANCISCO, CALIFORNIA

#### CERTIFICATE OF INDEBTEDNESS #1 OF 1

Kenneth Humphrey
5623 McMahon Street
Philadelphia, PA 19144
Account No. XXXXX6380

I certify that U.S. Department of Education records show that the BORROWER named above is indebted to the United States in the amount stated below plus additional interest from 10/15/14.

On or about 11/11/87, the BORROWER executed promissory note(s) to secure loan(s) of \$2,625.00 from First American Savings, Inc. This loan was disbursed for \$2,625.00 on 01/22/88 at 8.00% interest per annum. The loan obligation was guaranteed by Higher Education Assistance Foundation, and then reinsured by the Department of Education under loan guaranty programs authorized under Title IV-B of the Higher Education Act of 1965, as amended, 20 U.S.C. 1071 et seq. (34 C.F.R. Part 682). The holder demanded payment according to the terms of the note, and credited \$1,128.18 to the outstanding principal owed on the loan. The BORROWER defaulted on the obligation on 04/01/89, and the holder filed a claim on the loan guarantee.

Due to this default, the guaranty agency paid a claim in the amount of \$1,638.12 to the holder. The guarantor was then reimbursed for that claim payment by the Department under its reinsurance agreement. Pursuant to 34 C.F.R. § 682.410(b)(4), once the guarantor pays on a default claim, the entire amount paid becomes due to the guarantor as principal. The guarantor attempted to collect this debt from the BORROWER. The guarantor was unable to collect the full amount due, and on 11/12/93, assigned its right and title to the loan to the Department.

Since assignment of the loan, the Department has credited a total of \$250.00 in payments from all sources, including Treasury Department offsets, if any, to the balance. After application of these payments, the BORROWER now owes the United States the following:

Principal: \$1,638.12

Interest: \$2,993.65

Total debt as of 10/15/14: \$4.631.77

Interest accrues on the principal shown here at the rate of \$0.36 per day.

Pursuant to 28 U.S.C. § 1746(2), I certify under penalty of perjury that the foregoing is true and correct.

Delfin M Chen

Litigation Support Unit

Executed on: 03/02/15

Delfin M. Reyes Loan Analyst

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Acknowledges that:

1. Warrants that:

the undersigned hereby expressly:

the terms of the aforesaid Lender Agreement.

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bris throughout the to the undersigned arising out of said Lender Agreement; and pursuant to the aloresald Lender Agreement, HEAF will have discharged all a) upon payment in lull by HEAF of the daim submitted by the undersigned

the same to HEAF, but no other implied warranties are hereby discislimed.

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S. Disclaims the implied warranty that it has no knowledge of any insolvency prothe indebtedness evidenced by this instrument was guaranteed by HEAF. Agreement") between it and HEAF, in accordance with which payment of

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SCHOOL CERTIFICATION

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### H. DEFAULT

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**GHONBEARANCE** 

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